

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

PATRICIA DANIELS

PETITIONER

vs.

No. 3:01CV31-D

UNITED STATES OF AMERICA

RESPONDENT

OPINION

Presently before the court is the Petitioner's motion to vacate, set aside, or correct her sentence pursuant to 28 U.S.C. § 2255. Upon due consideration, the court finds that the motion should be denied.

A. Factual and Procedural Background

On July 23, 1999, the Petitioner pled guilty to one count of distribution of crack cocaine in violation of 21 U.S.C. § 841. She was sentenced to 97 months imprisonment on October 21, 1999. The Petitioner did not appeal her sentence. On June 12, 2000, the Petitioner filed this motion to vacate, set aside, or correct her sentence pursuant to 28 U.S.C. § 2255.

B. Discussion

In her motion, the Petitioner essentially seeks relief on two grounds: first, that the court erred in its calculation of the amount of drugs attributable to the Petitioner; second, that the court erred in its calculation of the Petitioner's Criminal History points. For the reasons set forth below, the court finds that none of the Petitioner's asserted grounds have merit, and her motion shall be denied.

1. Amount of Drugs Attributable to the Petitioner

Under section 2D1.1(a)(3) of the United States Sentencing Guidelines, the offense level of a defendant convicted of drug trafficking is determined by the quantity of drugs involved in the offense. United States v. Schorovsky, 202 F.3d 727, 729 (5th Cir. 2000). This quantity includes both

drugs with which the defendant was directly involved, and drugs that can be attributed to the defendant as part of her relevant conduct under U.S.S.G. § 1B1.3(a)(1)(B). Schorovsky, 202 F.3d at 729. The Sentencing Guidelines make clear that “the base offense level . . . shall be determined on the basis of the following: . . . (B) in the case of a jointly undertaken criminal activity (. . . whether or not charged as a conspiracy), all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity.” U.S.S.G. § 1B1.3(a)(1)(B).

The Petitioner was a participant in jointly undertaken drug trafficking enterprise. As such, despite the Petitioner’s argument to the contrary, the Sentencing Guidelines mandate that the court determine her base offense level based not only on her direct conduct, but also based on all reasonably foreseeable acts of others in furtherance of that drug trafficking enterprise. See id. As set forth in the Petitioner’s presentence investigation report, this is precisely what the court did in calculating the Petitioner’s base offense level.

At the Petitioner’s sentencing, the court held the Petitioner accountable for 129.36 grams of crack cocaine, and thus established the Petitioner’s base offense level to be 32. The United States Sentencing Guidelines provide for an offense base level of 32 for those defendants held accountable for between 50 and 150 grams of crack cocaine. U.S.S.G. § 2D1.1(c)(4). After reducing the Petitioner’s base offense level by three points for her acceptance of responsibility, the Petitioner was sentenced based on an offense level of 29. Her sentence of 97 months is the minimum prescribed sentence for this offense level. Because the court adhered to the Sentencing Guidelines and properly computed the Petitioner’s sentence, this asserted ground of relief is without merit.

2. Calculation of Petitioner’s Criminal History Points

In calculating a defendant’s criminal history category, which is necessary under the Sentencing

Guidelines in order to properly compute the defendant's sentence, the court assigns points based on past criminal behavior. U.S.S.G. § 4A1.1 - 4B1.4. The Petitioner was assigned a Criminal History Category of II, which is the proper level for those defendants receiving two or three Criminal History Points.

In determining the number of Criminal History Points to be assigned in cases such as this, the court, despite the Petitioner's assertion to the contrary, adheres to the following formula: For each prior criminal sentence that resulted in no imprisonment, or in imprisonment of one year or less, one Criminal History Point is assigned, provided that the sentence is not excluded from calculation by the Sentencing Guidelines, and provided that the sentence was imposed within ten years of the defendant's commencement of the current offense.

The Petitioner commenced the current offense on or about June 1, 1995. As such, any prior criminal sentences imposed on or after June 1, 1985, and not excluded by the Sentencing Guidelines, are to be assigned one Criminal History Point. The Petitioner was assigned three Criminal History Points, one for a non-excluded sentence imposed in April of 1986, one for a non-excluded sentence imposed in September of 1996, and one for a non-excluded sentence imposed in April of 1998. And, in accordance with the Sentencing Guidelines, three Criminal History Points translate into a Criminal History Category of II, which is the Category the court utilized in calculating the Petitioner's sentence. As such, the Petitioner was properly sentenced and this asserted ground for relief is without merit.

A separate order in accordance with this opinion shall issue this day.

This the ____ day of February 2001.

_____/s/_____
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

PATRICIA DANIELS

PETITIONER

vs.

No. 3:01CV31-D

UNITED STATES OF AMERICA

RESPONDENT

ORDER

Pursuant to an opinion issued this day, it is hereby ORDERED that

- (1) the Petitioner's motion to vacate, set aside, or correct her sentence pursuant to 28 U.S.C. § 2255 is DENIED.

SO ORDERED, this the ____ day of February 2001.

_____/s/_____
Chief United States District Judge